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8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 BYUNG HOON CHUNG, individually;
13 DUK BONG CHUNG, individually;
14 MYUNG BIN CHUNG, individually;
15 KUO CHUL CHUNG, individually; on behalf
of themselves and all others similarly situated,

16 Plaintiffs,

17 v.

18 MICHAEL MUKASEY, Attorney General
19 of the United States; DEPARTMENT OF
20 HOMELAND SECURITY; MICHAEL
CHERTOFF, Secretary of DHS;
and DOES 1 through 20, inclusive

21 Defendants.

) No. C 07-5554 SC

) **DEFENDANTS' STATUS REPORT**

) Date: May 23, 2008

) Time: 10:00 a.m.

22 The defendants wish to inform the Court that the United States Court of Appeals for the Ninth
23 Circuit has today denied the Chungs' petition for review in *Chung v. Mukasey*, Appeal No. 06-
71728. A copy of the Ninth Circuit's memorandum disposition is attached.

24 In the memorandum disposition, the Ninth Circuit expressly rejects the Chungs' equitable
25 estoppel claim, stating:

26 The Chungs' argument that the government should be equitably estopped from
27 pursuing their removal is equally unavailing. The Chungs claim they were the
victims of a fraud committed by Leland Sustaie, a supervisory official at the INS.
28 As we recently held in another case stemming from this same scheme, "Sustaie was
a government employee who took bribes and engaged in fraud, crimes for which he

STATUS REPORT

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1 was convicted. There is no dispute that Sustaire's acts were unauthorized. Thus,
2 the threshold requirement for applying equitable estoppel against the government" –
3 that the government authorized the acts – "is not satisfied in this case." *Shin*, 519
4 F.3d at 907.

5 Accordingly, even if this Court did have jurisdiction over the Chungs' district court action
6 despite the REAL ID Act, the action would have to be dismissed because the Ninth Circuit's
7 holding is law of the case and the plaintiffs are barred by the doctrines of law of the case and res
8 judicata from re-litigating their claims here.

9 Dated: May 13, 2008

JOSEPH P. RUSSONIELLO
United States Attorney

11 /s/
12 EDWARD A. OLSEN
Assistant United States Attorney